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9
10 IN THE UNITED STATES DISTRICT COURT

11 FOR THE DISTRICT OF ARIZONA

12 United States of America,
13 Plaintiff,
14 vs.
15 David Allen Harbour,
16 Defendant.

17
18 No. CR-19-00898-PHX-DLR

19
20 **JOINT PROPOSED VOIR DIRE**

21
22 The United States of America and Defendant David Allen Harbour, by and through
23 undersigned counsel, hereby respectfully submit the following stipulated Proposed Joint
24 Voir Dire. The United States objects to all of Defendant's proposed voir dire as either
25 duplicative or inappropriate.

26 Respectfully submitted this 4th day of January, 2023.
27

28 GARY M. RESTAINO
29 United States Attorney
29 District of Arizona

30 s/ Coleen Schoch
31 KEVIN RAPP
32 COLEEN SCHOCHE
32 Assistant United States Attorneys

- 1 5. Marital status
- 2 6. Number of children. Ages of children, if under 18
- 3 7. Employment
 - 4 A. Yourself – current job and types of jobs throughout lifetime
 - 5 B. Spouse – current job and types of jobs throughout lifetime
- 6 8. Civil, social, fraternal, union or professional organizations.
7 Offices held in them
- 8 9. Hobbies or recreational activities
- 9 10. Prior jury service – civil or criminal
- 10 3. Did any of you know each other before this morning?
11 If so, would your acquaintance with any other juror affect your ability to
12 deliberate and to reach your own independent decision as a juror in this case?
- 13 4. I will now read the names of the witnesses who may be called during this trial. If
14 you know or think you might know any of the witnesses, please raise your hand and
15 juror number at any time. The potential witnesses are:
16 [See Witness List]
- 17 5. Again, do any of you know or think you might know any of the witnesses?
- 18 6. Please note that the defendant, the attorneys and all witnesses have been instructed
19 not to speak to you at any time either before or during the trial. Therefore, please do
20 not feel offended if you see any of them outside the courtroom and they do not speak
21 with you.
- 22 7. I expect to conduct trial on these dates and times:
23 Wednesday, February 1, 2023 through Friday, February 24, 2023;
24 Trial will not be conducted on Mondays
25 8:45a.m. to 4:30 p.m. One hour break for lunch.
26 We will usually take one break in the morning and one break in
27 the afternoon of about 20 minutes.
- 28 1. Would this schedule create an undue hardship for any of you?

1 2. Would the length of the trial create an undue hardship for any of you?

2 8. Do any of you have any other reasons whatsoever, such as physical difficulty, a
3 health problem or home problems that might interfere with your serving as a fair
4 and impartial juror in this case?

5 9. Have you or any members of your family, including brothers, sisters, parents or
6 children, or close friends ever been the victims of criminal conduct such that you
7 would not be a fair and impartial juror in this case?

8 As to each yes response: If yes, please explain, including what the incident was,
9 what police agency investigated, did you have to make a statement, and whether
10 the responsible party apprehended, and why that experience prevents you from
11 being a fair and impartial juror in this case.

12 10. Most people or their family or close friends have been victims of minor crimes, such
13 as burglary, auto theft, and auto accidents involving impaired drivers. Have you or
14 any members of your family, including brothers, sisters, parents, or children, or
15 close friends ever been the victims of serious criminal conduct involving serious
16 property damage or bodily injury?

17 As to each yes response: If yes, please explain, including what the incident was,
18 what police agency investigated, did you have to make a statement, and whether
19 the responsible party was apprehended and why that experience prevents you
20 from being a fair and impartial juror in this case.

21 11. Have you or any members of your family ever been convicted of a felony?
22 If so, which family member, what offense, and what was the disposition? Would
23 this experience prevent you from being fair and impartial in this case?

24 12. Are any of you or any members of your family or close friends now serving or have
25 ever served in the capacity of law enforcement officer?

26 Please note that in the definition of law enforcement officer, I am including not
27 only police officers, but also employees of law enforcement agencies, Federal
28 Bureau of Prisons, military police, INS, border patrol, DEA, ATF, DOJ,

Department of Homeland Security, or other government law enforcement or intelligence agency, etc.

Do you think this relationship would prevent you from being fair and impartial in this case?

13. There may be witnesses called during this trial who are members of law enforcement and who may have been in that profession for a number of years.

Is there anything about the law enforcement profession and/or about the witness having been engaged in such profession for a number of years that would cause you to either give greater or lesser weight or credibility to their testimony solely by virtue of their employment in law enforcement?

14. Have any of you or members of your family been a party or witness in any litigation (excluding family law matters, traffic cases, and probate matters)?

To all who answered yes: Do you think this experience would prevent you from being fair and impartial in this case?

Addressed individually: What kind of case were you a witness in, and which party called you as a witness?

15. Do any of you or any of the members of your family have any legal training?

To all who answer yes: Do you think this training would affect your ability to be fair and impartial in this case?

Addressed individually: What was your legal training?

16. The defendant in this case is African American. Is there anything about the defendant's racial or ethnic status that would prevent you from being a fair and impartial juror in this case?

17. Have you had experiences with African Americans that might influence your ability to be fair and impartial?

18. **Not Applicable** [Do you disagree with the fact that the United States has the right to prosecute felony offenses on Indian Reservations?]

19. Not Applicable [There may be evidence in this case of alcoholic beverage

drinking to excess. Do any of you not drink alcoholic beverages?]

20. **Not Applicable** [Have you or any member of your family or a close friend ever suffered harmful consequences from drinking alcohol?]

21. **Not Applicable** [Do you have any strong feelings about drinking alcoholic beverages?]

22. **Not Applicable** [Would your feelings about alcohol consumption affect your ability to be a fair and impartial juror in this case?]

23. I will instruct you what the law is at the conclusion of the case. If selected as a juror, you will take an oath to follow the law. Does anyone think you would have trouble following the law even if you may disagree with it?

24. In a civil case the burden of proof is preponderance of the evidence. This is a criminal case in which the government must prove guilt beyond a reasonable doubt. That requires proof that leaves you firmly convinced that the Defendant is guilty. Does anyone have any difficulty in holding the government to its burden?

25. Here are some fundamental principles of law:

- The fact that an indictment or superseding indictment has been filed raises no presumption whatsoever of the guilt of the defendant.
- The United States government must satisfy you beyond a reasonable doubt of the guilt of the defendant.
- The defendant does not have any obligation to testify or to produce any evidence and you may not draw an adverse inference if the defendant chooses not to testify.
- The defendant is presumed to be innocent until his guilt is established beyond a reasonable doubt.
- You must wait until all of the evidence has been presented before making up your minds as to the innocence or guilt of the defendant.
- Does anyone believe that they will have any difficulty following these principles of law?

- 1 26. Do you have any strong feelings regarding any government policies which would
- 2 prevent you from giving either the government or the defendant a fair trial?
- 3 27. Do you have any strong feelings regarding the criminal justice system in this
- 4 country, including by not limited to, your feelings about judges and lawyers, that
- 5 would prevent you from giving either the government or the defendant a fair hearing
- 6 in this matter?
- 7 28. Do you have a belief, whether religious or philosophical, which makes it difficult
- 8 for you to sit in judgment of another?
9 If so: Would this belief make it difficult for you to be a fair and impartial
10 juror?
- 11 29. **Not Applicable** [[If interpreters:] This case will involve official court
- 12 interpreters. Do you know the [] language? If so, will you be able to set aside that
- 13 knowledge and rely solely on the official English translation?]
- 14 30. Counsel for the Government, do you have any further questions at this time?
- 15

16 **UNITED STATES ADDITIONAL PROPOSED VOIR DIRE**

- 17 31. Does anyone have difficulty reading or understanding the English language?
- 18 32. Does anyone have difficulty hearing?
- 19 33. Introduce self and staff. Do any of you know me or any member of my staff on any
- 20 basis, social, professional or otherwise?
- 21 34. The United States is represented by Kevin Rapp and Coleen Schoch. Counsel,
- 22 please stand. Mr. Rapp and Ms. Schoch are Assistant United States Attorneys. The
- 23 United States Attorney is Gary Restaino. Do any of you know counsel, or the United
- 24 States Attorney, or any of the employees in his office on any basis, social,
- 25 professional or otherwise?
- 26 35. The defendant is represented by Stephen Dichter and Justin Vanderveer. Counsel
- 27 please stand. Do any of you know the defendant's attorney or any employees of
- 28 their office on any basis, social, professional or otherwise?

- 1 36. Counsel, please introduce your client. Do any of you know the defendant on any
- 2 basis, social, professional, or otherwise?
- 3 37. Is there anyone on the panel who believes that federal laws in general punish too
- 4 harshly?
- 5 38. If selected to serve as a juror in this case, you will be instructed that you are not to
- 6 consider punishment, as that is for the court to decide. Will you be able to put any
- 7 consideration of punishment out of your minds and consider only the evidence
- 8 introduced and the law as explained to you by the judge?
- 9 39. Does anyone have negative feelings toward the Federal Bureau of Investigation, the
- 10 Internal Revenue Service, the Department of Justice; or other law enforcement
- 11 officials?
- 12 40. Has anyone had a negative experience with any representative of the Federal Bureau
- 13 of Investigation, the Internal Revenue Service, or with any employee of the
- 14 Department of Justice?
- 15 41. The defendant in this case is charged with the crimes relating to financial fraud and
- 16 tax fraud. Would that fact alone affect your ability to be fair and impartial in this
- 17 case?
- 18 42. Does anyone believe that any of the crimes charged in this case should not be
- 19 crimes?
- 20 43. Would anyone like the tax laws to be changed?
- 21 44. Does anyone belong to an organization that advocates for changes to tax laws?
- 22 45. Does anyone have feelings about financial fraud or tax fraud that would affect your
- 23 ability to be fair and impartial in this case?
- 24 46. If selected to serve as a juror in this case, you will be instructed that you are not to
- 25 consider punishment, as that is for the court to decide. Will you be able to put any
- 26 consideration of punishment out of your minds and consider only the evidence
- 27 introduced and the law as explained to you by the judge?
- 28 47. If you were on one side or other, as either prosecution or defense, would you be

1 satisfied to have someone with your present feelings and outlook serving on the
2 jury?

3 48. Does anyone have concerns relating to COVID-19 that would affect your ability to
4 give your full attention to the trial in this case?

5

6 **JOINT ADDITIONAL PROPOSED VOIR DIRE**

7 49. Have you or anyone you know suffered a financial loss as a result of payday lending,
8 tax evasion or mortgage fraud? If so, please describe.

9 50. Have you or anyone you know ever been accused of alleged payday lending, tax
10 evasion or mortgage fraud?

11 51. Does anyone have any training or education in commercial or consumer lending,
12 and if so, what specific training or education he/she has received and in what
13 context?

14

15 **DEFENDANT'S ADDITIONAL PROPOSED VOIR DIRE**

16 1. Please state your name.

17 2. Please state your address.

18 3. Please state your date of birth.

19 4. Please state your place of birth.

20 5. Please tell us about your education and what was the last year of school finished by
21 you.

22 6. Please state your occupation.

23 7. Please tell us about your duties at your place of employment.

24 8. When did you start working there?

25 9. What was your occupation before your present employment?

26 10. What were your duties and responsibilities in that employment?

27 11. What is your marital status?

28 12. If married, what is your spouse's place of employment?

- 1 13. How many children do you have; how many boys and how many girls and what are
- 2 their ages?
- 3 14. If your children are employed, where are they employed?
- 4 15. Where do your children reside?
- 5 16. How long have you resided at your present residence?
- 6 17. What organizations do you belong to?
- 7 18. What local newspapers do you read? Do you read them fairly regularly? Do you
- 8 watch the local news on T.V.? What is your favorite T.V. Program?
- 9 19. Are you generally inclined to believe what people may write or say when those
- 10 people have particular education or experience in what they are discussing?
- 11 20. Have you ever served as a juror before?
- 12 21. What kind of case?
- 13 22. Where?
- 14 23. Was a verdict reached?
- 15 24. Is there anything about your experience as a juror which would effect your sitting
- 16 as a juror in this case?
- 17 25. Have you ever been personally interested in the outcome of a criminal case?
- 18 26. If so, was it because you were a victim of a crime, a witness to a crime, or some
- 19 other reason?
- 20 27. Have any of your family or close friends been personally interested in the outcome
- 21 of a criminal case?
- 22 28. If so, why?
- 23 29. Is there anything about the nature of this case that affects you one way or the other?
- 24 30. Do you realize that we are here to try a case in which the Defendant is charged with
- 25 committing a crime?
- 26 31. Do you realize that the Defendant is presumed innocent unless and until he is proven
- 27 guilty beyond a reasonable doubt?
- 28 32. Do you understand that the Defendant pleaded Not Guilty and he invokes his

1 constitutional right to have the government to present evidence with proof beyond
2 a reasonable doubt to overcome the presumption of innocence?

3 33. Do you understand that the presumption of innocence is not to shield the guilty but
4 only to protect the innocent?

5 34. If you are satisfied that the government has not met its proof would you hesitate to
6 bring back a verdict of Not Guilty?

7 35. Seeing the Defendant here, do you feel that you are emotionally capable of bringing
8 in a verdict of Not Guilty, should the government fail to prove the crimes charged
9 beyond a reasonable doubt?

10 36. Do you understand that both the Defendant and the government are entitled to have
11 twelve (12) jurors with free and open minds who are fair , unprejudiced and
12 unbiased?

13 37. Do you feel as you sit here now that you are in such a frame of mind that you will
14 be able to give both the Defendant and the government a fair trial?

15 38. Is there anything about the nature of the alleged offenses which would influence
16 your judgment in any way?

17 39. Have you or any friends or relatives ever been the victim of a crime?

18 40. Do you know any other prospective jurors?

19 41. Are you willing as a juror to return a verdict of Not Guilty if there are two reasonable
20 theories, one of which leads to innocence and one of which leads to guilt since the
21 government has the burden of proof beyond a reasonable doubt to prove the
22 elements of a crime?

23 42. Are you willing as a juror to stay as long as is necessary to reach a verdict?

24 43. Is there anything in your heart that you haven't told me about yourself to which the
25 government and the Defendant would be entitled to know in order to judge whether
26 or not you can sit fairly and impartially in this case?

27 44. Have you ever had any experience with any police or other law enforcement
28 officers? What was your opinion about the way the officers behaved during that

1 | experience?

2 45. Would your experience with the police officers tend to make you believe that law
3 enforcement officers are special whose testimony is more believable than the
4 testimony of some other person?

5 46. Do you think a law enforcement officer's judgment and observations would be better
6 or more reliable than your own?

7 47. Do you have any relatives or friends who are in the Internal Revenue Service or law
8 enforcement agency, such as the FBI or DEA, or any local police departments?
9 What is your relationship with them? How often do you see them? Have you ever
10 discussed their jobs with them?

11 48. Can you recall any instance in which you thought the police were wrong in arresting
12 somebody?

13 49. If a relative or close friend were charged with something and were sitting here in
14 place of the Defendant, what would your feelings be as he or she sat here?

15 50. Is there anything about the nature of the charges alleged in this case that would
16 prevent your listening and carefully considering the evidence introduced by the
17 Defendant?

18 51. What is your personal opinion regarding stock trading in general?

19 52. Do you recall ever having a conversation with others in which the general subject
20 of alleged payday lending, tax evasion or mortgage fraud was discussed? If so, can
21 you recall what opinion you expressed at that time?

22 53. What is your first reaction, when you hear a news report on the TV or radio that
23 someone was arrested for alleged payday lending, tax evasion or mortgage fraud?

24 56. Do you have any strong feelings against someone accused of alleged payday
25 lending, tax evasion or mortgage fraud? If yes, please explain.

26 57. Have any of you, your relatives, or close friends, had a bad experience with the
27 Internal Revenue Service, the United States Attorney's Office, or any other law
28 enforcement agency (state or federal) that might influence your ability to be fair and

1 impartial in this case?

2 58. Does any member of the jury panel have any member of his or her family, or a close

3 friend, who has been accused of payday lending, tax evasion or mortgage fraud? [If

4 so, we would ask the Court to follow up with questions for details who was it, what

5 was their experience.]

6 60. Do you have friends or relatives who are or have been government employees or

7 law enforcement employees.

8 61. How would you describe the Defendant to your (wife) (husband) or a friend?

9 62. Have you ever held the thought that defense lawyers represent people that are

10 guilty?

11 63. Can you recall instances in which you expressed your feelings about the Judicial

12 System in the United States?

13 64. Are you connected with any agency of the Federal Government?

14 65. Have you ever been employed by any agent of the Federal Government?

15 66. Do you receive social security benefits, or any other pension or other payments from

16 the Federal Government? If so, do you have cause to feel a particular gratitude or

17 allegiance to the Federal Government?

18 67. Please state whether any persons related to you or members of your family or

19 personal friends are or have been employed by any agency of the Federal

20 Government. If so, state the degree of this relationship and the average amount of

21 time you spend with this person over the course of a week or a month.

22 68. What do you understand by the words: “presumption of innocence”?

23 69. Do you think there is still a “presumption of innocence” for a defendant who is

24 brought to trial? Or, does the fact that a person has been accused of crime by a

25 grand jury, working with the federal attorneys and officers incline you to think that

26 the defendant must be guilty, or he wouldn’t be here?

27 70. What do you understand by the term: “proof beyond a reasonable doubt”?

28 71. What is your opinion about a person who admits he has committed some offense,

1 but in exchange for leniency from the Government is willing to testify about the acts
2 of others?

3 72. If you thought that your individual conclusion about the guilt or innocence of the
4 Defendant would be contrary to what you think that the government, or the Judge
5 might want you to decide, would you still be able to stand on your own personal
6 conviction?

7 73. Have you ever had the occasion to hire a lawyer?

8 74. What lawyer?

9 75. Was it a civil or criminal case? Has anybody in your family had the occasion to hire
10 a lawyer? What lawyer? Was it a civil or criminal case?

11 76. Do you believe lawyers should be held to a higher standard of conduct than other
12 citizens?

13 77. Have you ever heard of the statute of limitations?

14 78. If the government had a deadline to bring charges and they are past that deadline,
15 would you hesitate to find the Defendant not guilty?

16 79. Do you have any negative feelings about the statute of limitations?

17 80. Do you think that you could be fair and impartial if you had to consider the statute
18 of limitations when deciding this case?

19 Defendant reserves the right to request additional questions and follow-up questions
20 when necessary and appropriate based on the responses of the prospective jurors or if other
21 issues arise.

22
23 Respectfully submitted this 4th day of January, 2023.

24 GARY M. RESTAINO
25 United States Attorney
26 District of Arizona

27 *s/ Coleen Schoch*
28 KEVIN RAPP
COLEEN SCHOCH
Assistant United States Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on this same date I electronically transmitted the attached document to the Clerk's Office using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant(s):

Stephen M Dichter
Justin R Vanderveer
Attorneys for Defendant

s/ Coleen Schoch
U.S. Attorney's Office